



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0152; FRL-9980-62-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Delaware; Interstate Transport Requirements for the 2012 Fine Particulate Matter
Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0152. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For

Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2015, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision addressing the infrastructure requirements under section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS. On September 22, 2017, EPA approved all portions of Delaware’s submittal except for the portion addressing section 110(a)(2)(D)(i)(I) regarding the interstate transport of emissions. *See* 82 FR 44318. As explained in the final rule, EPA intended to take separate action on that portion of Delaware’s submittal and is doing so with today’s proposed action. On May 15, 2018 (83 FR 22436), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware’s submittal to address the infrastructure requirements under section 110(a)(2)(D)(i) of the CAA for the 2012 PM_{2.5} NAAQS.

II. Summary of SIP Revision and EPA Analysis

Delaware’s December 14, 2015 SIP submittal asserted that the State’s SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to nonattainment or interfere with maintenance of the 2012 PM_{2.5} NAAQS. Delaware also asserted under Delaware Code, Title 7, Chapter 60, Subsection 6010(c), “Rules and regulations; plans,” that the State has the legal authority to regulate sources whose emission could transport to areas in nonattainment or to areas currently attaining the NAAQS.

Delaware also describes ambient air quality data for New Castle, Kent, and Sussex Counties as all being below the NAAQS.

EPA used the information in the 2016 PM_{2.5} Memorandum¹ and additional information to evaluate the submittal and came to the same conclusion as Delaware. As discussed in greater detail in the technical support document (TSD) for this action, EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM_{2.5} Memorandum, and then evaluated them to determine if Delaware's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM_{2.5} nonattainment areas. EPA concluded Delaware was not significantly contributing to nonattainment nor interfering with maintenance with 2012 PM_{2.5} NAAQS by any other state. A detailed summary of Delaware's submittal and EPA's review and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} NAAQS may be found in the NPR and TSD for this rulemaking action, which are available online at www.regulations.gov, Docket number EPA-R03-OAR-2017-0152.

III. Public Comments

One anonymous public comment was received during the public comment period, but the comment was determined to not be relevant nor specific to this rulemaking action. Thus no response is provided.

IV. Final Action

¹ "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016). A copy is included in the docket for this rulemaking action.

EPA is approving the December 14, 2015 SIP revision addressing the interstate transport requirements for the 2012 PM_{2.5} NAAQS to the Delaware SIP because the submittal adequately addresses section 110(a)(2)(D)(i)(I) of the CAA.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication

of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing Delaware’s interstate transport for the 2012 PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: June 19, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding a second entry for Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS after the first entry. The revised text reads as follows:

§ 52.470 Identification of plan.

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Section 110(a)(2) Infrastructure Requirements for the 2012 PM _{2.5} NAAQS	Statewide	12/14/2015	<u>[Insert date of Federal Register publication],</u> <u>[Insert Federal Register citation]</u>	Docket 2017-0152. This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I)
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[FR Doc. 2018-14838 Filed: 7/11/2018 8:45 am; Publication Date: 7/12/2018]